IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..4..2007

Coram:

The Honourable Mr. Justice K.CHANDRU

W.P. Nos.11455 to 11457 of 2007
and
M.P.Nos.1 and 2 of 2007 in all the W.Ps.

K.Kumaran .. Petitioner in W.P.No.11455 of 2007

S.Michael Thason .. Petitioner in W.P.No.11456 of 2007

M.Mariadhas .. Petitioner in W.P.No.11457 of 2007

:versus:

1. The State of Tamil Nadu
Rep. by its Secretary
Transport Department
Fort St. George,
Chennai - 9 ..1st Respondent in all WPs.

2. The Management of Tamil Nadu
State Transport Corporation
Rep. by its Managing Director
Division - III, Madurai ..R2 in W.P.Nos.11455 & 11456 of 2007

3. The Management of Tamil Nadu
State Transport Corporation
Rep. by its Managing Director
Division - II, Wannarpet
Tirunelveli District ..R2 in W.P.11457/2007

4. The General Manager
The State Transport Corporation (Madurai) Ltd.
Nagercoil
Kanyakumari District .. R3 in W.P.Nos.11455 & 11456/2007

W.Ps.11455 and 11456 of 2007 filed under Art.226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus by calling for the records relating to the order passed by the third respondent in Letter No.5591/Legal-9/TNGTC/2006 dated 18.9.2006 and quash the same and further direct the respondents to implement the G.O.Ms.No.41 dated 13.7.2006 to

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the petitioner and to follow the Division Bench judgment and re-employ the petitioner to the post of driver in the second respondent corporation. W.P.No.11457 of 2007 is filed for a direction to the respondents to re-employ the petitioner as Driver as per Section 25H of the Industrial Disputes Act and to extend the benefit of G.O. Ms.No.41 dated 13.7.2006 passed by the first respondent.

For Petitioners :: Mr.S.Parthasarathy
Intervenors :: Mr.D.Hari Paranthaman}
Mr.S.Vaidyanathan }

For Respondents :: Mr.R.Viduthalai, AG
for Mrs.C.K.Vishnupriya, GA

**COMMON ORDER**

These three writ petitions relate to the claim of the three petitioners for getting re-employment in the second respondent State Transport Corporation on the basis that they had worked temporarily for several days in the Transport Corporation.

2. In W.P.No.11455 of 2007, the petitioner was a Driver and according to him, he had worked from 02.6.2005 on casual employment and that he was retrenched from service on 23.7.2006. Thereafter, he was not given any further employment by the Corporation. When he made representation to the respondent Corporation, they did not respond to the same and he filed a writ petition before this Court being W.P.No.24856 of 2006 and this Court, by an order dated 07.8.2006, directed the second respondent to consider the representation made by the petitioner. The second respondent Corporation by an dated 18.9.2005 informed the petitioner that he had not worked for 240 days in their Corporation and in their Monday Market Branch, he had worked from 19.7.2005 to 06.8.2005 for a period of 14 days and thereafter, after a long gap, he had worked from 16.4.2006 to 07.5.2006 and altogether he had worked for 27 days and his employment was necessitated due to increase in workload during festivals, absentism by workmen and also due to the strike notice issued by some Unions. But since he was not given any assurance of continuous employment after the spell of each employment, his services were dispensed with. Even at the time of employment, he was aware that he is not eligible for any permanency and no appointment order was given to him. Further, he was also told that at no point of time, the petitioner was engaged for 240 days in 12 calender months and in the light of the definition of the term 'retrenchment' found under Section 2(oo) of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'], he cannot be held to be retrenched. Once he had not been retrenched, no preference in terms of Section 25H of the I.D. Act can be given to him. Further, he was also informed that G.O.Ms.No.41 Transport (C.1) Department dated 13.7.2006 will not apply to him and that his name had not been removed from the rolls of the Employment Exchange.

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3. In the same way, the worker Michael Thason also filed a writ petition being W.P. No.11456 of 2007 making a similar claim. He was also informed by the second respondent Corporation by an order dated 18.9.2005 that he has worked only for 12 days from 11.11.2001 to 23.01.2001 under the circumstances referred to above.

4. In the third writ petition being W.P.No.11457 of 2007, the petitioner Mariadhas had claimed that he had worked for more than 240 days and that he had come to this Court earlier in W.P.No.761 of 1999 seeking for a direction. Upon direction by this Court, he was informed that he had not completed 240 days. Therefore, the question of retrenchment does not arise and he was informed accordingly by the Corporation on 14.6.2000. Once again, on the strength of G.O.Ms.No.41 Transport (C.1) Department dated 13.7.2006, the petitioner has filed the present writ petition seeking for a direction to the respondent for his re-employment under Section 25H of the I.D. Act and also to extend the benefit of the above said G.O.

5. On these three writ petitions, notice was ordered to the Advocate General and he appeared for the first respondent State and the second respondent and made submissions on the legality of the claim made by the workmen.

6. I have heard the arguments of Mr.S.Parthasarathy, learned counsel for the petitioner, and Mr.R.Viduthalai, learned Advocate General appearing for the State assisted by Mrs.C.K.Vishnupriya, learned Government Advocate and have perused the records. Mr.D.Hari Paranthaman, learned counsel appearing for similarly placed persons intervened and made submissions and Mr.S.Vaidyanathan, who is also counsel for similarly placed persons, also advanced certain submissions.

7. The re-employment in question in the Transport Corporation has been the subject matter of several litigations before this Court for the last ten years. An uncertainty over the employment issue was created largely on the action of the respondents, who have not taken any clear stand on the issue of recruiting personnel in a regular manner after conducting a proper selection. Initially, it was stated that there was a ban on recruitment for several years and the Corporation was resorting to all kinds of adhoc arrangements. It was also stated that the entire recruitment procedure with reference to the Conductors, Drivers and other technical staff was done initially by engaging workers as temporary casuals and thereafter, pursuant to the settlement between the Trade Unions and the Corporations, a worker who had put in 240 days of service was made eligible for regularisation and then was given regular appointment and probation period was also prescribed. Under the certified Standing Orders applicable to the respondent Corporation, a workman cannot be engaged as a casual unless it is a work of casual nature. The settlement coupled with the Standing Orders gave a

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complete go-by to the regular mode of recruitment. Adhocism became the order of the day. The result was transport Corporations, being wholly owned by the State Government and were "State" within the meaning of Article 12 of the Constitution of India, allowed all kinds of casual engagement at the level of Branch Managers, who were not appointing authorities for any of these posts. After sometime, those workmen sought for regularisation in terms of the Act.

8. It was during 1997, several writ petitions were filed and they were also allowed. When the matter was taken up before the Division Bench, the Transport Corporation was directed to undertake an exercise of deciding each individual's claim as to whether Section 25F of the I.D. Act was complied with or not. In case of retrenchment, not complying with Section 25F of the I.D. Act, the cases were disposed of by directing reinstatement of workmen with all benefits. The said exercise was directed to be completed within two months from the date of the order of the division bench, viz., 08.12.1997. In respect of the other workmen, who had not completed 240 days, a right was conferred in terms of Section 25G of the I.D. Act and the Corporation was directed to offer job to the retrenched employees by complying with Section 25H of the I.D. Act and if any adverse order is passed, the employees were given liberty to approach the Court.

9. This order the Division Bench triggered in filing of spate of petitions before this Court with all sorts of claims including cases where workers were not qualified for retrenchment sought for a direction for regularisation. In most of the cases, direction was given to the respondent Corporation to deal with the representation made by the individual workmen in accordance with law and in the light of the order of the Division Bench. Once this process started, further spate of claims started coming to this Court and in many of the cases, this Court directed the Corporation merely to consider the representation. In cases, where, on consideration, the workers' claims were negatived, they were directed to approach the forum under the I.D. Act. This was the Human Resources (HR) policy adopted by the Corporation who neither had regards for I. D. Act nor about the certified Standing Orders. In many cases from 1997 onwards, persons were employed even without being sponsored by the Employment Exchange. Altogether, 1685 workmen filed writ petitions before this Court and in 952 cases of workmen, this Court directed re-employment to be provided in terms of Section 25H of the I.D. Act in preference to new entrants. These orders were not challenged and became final.

10. In some of these cases, the Transport Corporation had filed defective appeals and in cases where workmen who were not granted relief, also filed writ appeals. The writ appeals as well as the pending writ petitions were listed before a Division Bench of this Court and the Division Bench passed the order granting relief in some of the cases. But in paragraphs 34(iii)(a) and (b) of the order in Writ Appeal No.2985 of 2003, etc. batch, disposed on 08.12.2005, the Division Bench (presided

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by P.Sathasivam, J.) passed the following order:

**Para 34 (iii) (a):-**

"In other writ petitions direction is issued to the respondents - Transport Corporations to provide re-employment to the writ petitioners who completed 240 days in the respective Corporations and satisfied other conditions, if any, in accordance with section 25-H of the Industrial Disputes Act in preference to new entrants.

**Para 34 (iii) (b):-**

Those (writ petitioners) who worked less than 240 days shall also be given re-employment and their services will be regularised, only after completion of 240 days and subject to fulfilling other conditions, if any."

[Emphasis added]

11. Then, came the ban order on new recruitments in all the Corporations by G.O.Ms.No.27, Finance (BPE) Department, dated 21.01.2002. Thereafter, due to the acute shortage of Drivers and Conductors and due to the fact that a number of persons were superannuated and went under Voluntary Retirement Scheme, the Corporation wrote a letter to the Government for relaxation of the ban order. Accordingly, the ban was relaxed by G.O.Ms.No.57, Transport , dated 21.7.2005 permitting as a special case to recruit 2000 Drivers and 700 Conductors. It was a strange coincidence that when this relaxation was made, the elections to the State Assembly was due towards early 2006. So when the process of selection through Employment Exchange was done and orders were sent to the selected candidates for making direct appointment, the model code of conduct came into operation and the Election Commission of India ordered that the selected candidates should not be allowed to join duty before the completion of election process. The second respondent was informed by the Government vide letter dated 04.8.2006 that the selected candidates should not be allowed to join duty before the completion of the process of election and accordingly, the said candidates were not allowed to report to duty.

12. After completion of the process, there was a change in Government and the new Government issued G.O.Ms.No.41 Transport (C.1) Department dated 13.7.2006. The operative portion found in paragraphs 4 to 6 of the said G.O. is as follows:

"4. The Government accordingly issue the following orders to the Managing Directors of all the State Transport Corporations on implementation of the directions of the High Court of Madras in regard to appointment of Drivers and Conductors.

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i) Preference shall be given to the persons who were retrenched from service but obtained orders from High Court for re-employment in terms of Section 25(H) of Industrial Dispute Act, 1947.

ii) Preference shall, also be given to similarly placed persons who have approached the court and whose cases are still under consideration.

Iii) Preference shall be given to those persons whose services were terminated and who are similarly placed like persons mentioned in clause (i) and (ii) who have not yet approached the Court when they approach the Managing Directors seeking similar appointment.

(iv) While giving such preference the conditions imposed by High court of Madras in the judgement dated 7.4.2006 in W.P.No.38097/2005 etc., viz. (a) Physical fitness and eye-fitness (b) Driving skill in respect of Drivers shall be followed.

5. The Managing Directors of all the Transport Corporations are directed to re-examine the vacancy position after giving preference to the retrenched persons in appointment as detailed above.

6. The Managing Directors of all the State Transport Corporations are therefore directed to withdraw the provisional appointment orders already issued to Drivers and Conductors selected based on the orders issued in the G.O. Read above in view of the necessity to give preference to retrenched employees stated above as per the orders of the High Court."

[Emphasis added]

13. In view of the fact that the said G.O. while guaranteed the right of re-employment under Section 25H of the I.D. Act to the retrenched workmen and cases which are

covered by Court orders, the newly appointed candidates were informed that no posting order can be issued in view of the so-called preferential right made in favour of the the retrenched workmen. This, once again, gave rise to a spate of writ petitions from two different quarters. One set of persons, who were given appointment orders but not posting orders, aggrieved by the cancellation of their appointment came to this Court and challenged paragraph 6 of G.O.Ms.No.41 referred to above. The other set of workmen, who claimed to be covered by paragraph 4 of the G.O. referred to above, filed writ petitions to enforce their right in terms of

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paragraph 4 found in the said G.O. By orders of this Court, both sets of writ petitions were directed to be heard together.

14. This Court (P.Jyothimani, J.), by a common order dated 14.12.2006, made in W.P.No. 26195 of 2006, etc. batch, passed a final order upholding the validity of the said G.O. Paragraphs 134, 135, 136 and 138 of the said order read as follows:

**Para 134:** "Therefore, considering all the above said facts, I am of the considered view that the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 relating to Clause 4, Clause 5 and Clause 6 are perfectly in order.

**Para 135:** As far as the Clause 3 of the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 is concerned, as correctly pointed out by the learned counsel Ms.D.Nagasaila and other learned counsels who have adopted her arguments, there is no rational nexus in conferring the benefits of the G.O. in giving preference in respect of employees appointed from 1997 onwards and were terminated later and to the object of giving preference to the retrenched employees as per Section 25(H) of the Industrial Disputes Act. As I have narrated earlier Section 25(H) of the Act does not prescribe any period of limitation for the purpose of giving preference except to state that the conditions mentioned for the purpose of retrenchment, has to be complied with. Therefore, there is absolutely no reason for the respondent Corporation to restrict the right of preferential treatment in reemployment to be given only to those employees, who were appointed from 1997 and terminated there after, which means retrenched there after.

**Para 136:** In view of the same, the portion of the said impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006, Clause 3, in so far as it applies regarding reemployment to the persons, appointed from 1997 is set aside, making it clear that the right of reemployment under Section 25(H) of the Industrial Disputes Act, shall be made applicable to all persons appointed by the respondent Corporations earlier and there after terminated irrespective of the year of their appointment and retrenchment."

**Para 138:** "I do not propose to go into the said fact, making it clear that after giving benefits to the persons eligible under Section 25(H) of the Industrial Disputes Act, it is always open to the respondent Corporations to consider the case of the petitioners, who challenged the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 along with other eligible candidates, while making appointments."

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After recording the findings as stated above, in paragraph 139 (a),(b) and (c), the following directions were issued:-

**Para 139(a):**

> "to the employees who were terminated from services subject to the condition that such employees have completed 240 days service in a period of one year during the period of 12 calendar months, preceding the date on which the respondents proposed fill up the vacancies as per G.O.Ms.No.57 Transport (C1) Department dated 21.07.2005."

**Para 139(b):**

> "and thereafter to consider the employees who have not completed the required service as per Section 25(H) of the Industrial Disputes Act, for reemployment, however, making it clear that the same shall not apply to any persons who have not actually worked under the respondent Corporations but made a bogus claim."

**Para 139(c):**

> "After exhausting the above said two categories, to consider the cases of the petitioner who challenged the impugned G.O.Ms.No.41 Transport (C1) Department, dated 13.07.2006 for remaining vacancies of Drivers/Conductors in accordance with law."

15. Since the cases of direct recruits were subordinated to the claims of workmen, who on preferential basis sought re-employment, those persons filed writ appeals being W.A.No. 345 of 2007, etc. batch. They were heard by a Division Bench (Presided by S.Mukhopadhaya, J.) of this Court. Before the Division Bench, the learned Advocate General gave an undertaking on behalf of the State and the Transport Corporation and it was recorded in paragraph 2 of the order dated 12.3.2007, which reads as follows:

**Para 2:** "The respondents have agreed to consider the case of the appellants and other similarly situated persons for appointment in the Chennai Metropolitan Transport Corporation who were selected pursuant to G.O.Ms.No.57, Transport (C1) Department, dated 21.7.2005 subject to their fulfilling the following conditions:

a) the candidate should be qualified for the post;
b) the candidate should be physically fit;
c) the candidate should be fit in vision test;
d) the candidate should possess a valid licence.

In view of the said undertaking, the batch of cases were disposed of.

16. One would have thought by the decision of the learned single Judge in the batch of cases in W.P.No.26195 of 2006, etc. batch, disposed on 14.12.2006, and the order of the Division Bench made in W.P.No.345 of

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2007, etc. batch of cases, disposed on 12.3.2007, the matter would have set at rest. But, however, a spate of writ petitions (like the present writ petitions) have started being filed before this Court claiming similar relief. In most of the cases, no details regarding the number of days worked by the petitioners have been furnished. Therefore, in order to understand the full scope of G.O.Ms.No.41 dated 13.7.2006 and the claims having been rejected by the second respondent Corporation, which took a definite stand that the petitioners were not retrenched and, therefore, the question of re-employment does not arise, notice was ordered to the Advocate General as stated above and the matters were heard fully.

17. This Court asked the learned Advocate General as to the exact import of paragraph 4 of G.O.Ms.No.41 Transport Department dated 13.7.2006. There can be no dispute on the issue that the Corporation had to accommodate 1685 retrenched persons, who had filed writ petitions, out of which 952 persons got Court orders and those orders of this Court have not been challenged and have become final, the Corporation is bound to provide employment to those persons. Therefore, there will not be any difficulty in implementing paragraph 4.1 of the G.O. whether there are already orders of this Court for re-employment under Section 25H of the I.D. Act for those retrenched workmen. But the real difficulty is in interpreting paragraphs 4(ii) and 4(iii). These two sub-paragraphs create more confusion and also create a right, which was not contemplated strictly in terms of the I.D. Act. The said paragraphs are couched in loosely worded terms, which is susceptible for meanings, which are not intended as rights guaranteed under the I.D. Act. The claim made by the petitioners in the present writ petitions and the stand taken by the respondent Corporation in terms of law, which is in existence, are the direct result of paragraph 4(iii) of G.O.Ms.No.41.

18. When the Corporation states that while the Government Order talks about similarly placed persons and persons, who have approached the Court and whose cases are still under consideration, it is not clear as to how the respondent Corporation will grant any benefit to those persons who came before this Court earlier and the same will depend upon the relief that may or may not be granted by this Court and it cannot be left to the whims and fancies of the Transport Corporation. In fact, sub-paragraph 4(iii) of the G.O. is much more contentious because they do not even require any Court order. All that it requires is the munificence or the goodness of the Managing Directors. This kind of attitude of the respondent State in creating confusion and also constitutional infringement in the matter of providing appointment to persons, who do not have any right under the law, is not only objectionable but violative of Articles 14 and 16 of the Constitution of India. Therefore, in order to understand the real import of paragraphs 4 (ii) and 4(iii), the learned Advocate General was requested to help this Court in arriving at a true construction of the G.O. and the right created

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in terms of these paragraphs.

19. On the request made by this Court, the learned Advocate General drew the attention of this Court to the real scope of Section 25H of the I.D. Act and the said provision reads as follows:

> **"25H. Re-employment of retrenched workmen.--**
> Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons."
>
> [Emphasis added]

20. Thereafter, the learned Advocate General fairly stated that the word 'retrenchment' found in Section 25H of the I.D. Act need not be understood to mean that it is available only to a person, who got retrenched in terms of Section 25F of the I.D. Act, but it should take the colour and meaning from the definition of the term 'retrenchment' found in Section 2(oo) of the I.D. Act, which reads as follows:

> "(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--
>
> (a) Voluntary retirement of the workmen; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
>
> (c) termination of the service of a workman on the ground of continued ill-health;]"
>
> [Emphasis added]

21. As can be seen from the said definition, Section 2(oo)(bb) was introduced by Central Act 49 of 1984 and it was brought into force with effect from 18.8.1984. Therefore, if any person who seeks a claim of re-employment under Section 25H of the I.D. Act, must necessarily satisfy the amended definition of the term 'retrenchment' in order to claim preference in employment. Though the Apex Court had taken the view that

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in order to qualify for the right of re-employment under Section 25H of the I.D. Act, one need not satisfy the condition found in Section 25H of the I.D. Act, but from the word 'retrenched' found in Section 25H of the I.D. Act, it should take the colour from the definition found in Section 2 (oo) of the I.D. Act.

22. The decision of the Supreme Court reported in **1996 (5) SCC 419 [*Central Bank of India vs. S.Satyam and* others]** which was referred to and taken note of by the learned Judge in W.P.No.26195 of 2006, etc. batch, disposed on 14.12.2006, an extensive reference to the said decision has been made. To understand the ratio of the said decision, it is necessary to refer to paragraphs 9 to 11 of the said judgment, which is as follows:

**Para 9:** "The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in Section 2( *oo* ). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman ... who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman ... who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous ser vice for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F.

**Para 10:** The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched

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workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

**Para 11:** Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected."

But it must be stated that as seen from the facts of the said case as narrated in paragraph 12 of the judgment of the Supreme Court, the said decision came to be made before the amendment of Section 2(oo) of the I.D. Act in the year 1984 wherein one more exception, viz., 2(oo)(bb) has been introduced as referred to earlier.

23. Similar is the case of the Supreme Court reported in **2006 (1) SCC 530 [*Regional Manager, SBI vs. Rakesh Kumar Tewari*]** wherein ***Satyam case*** (cited supra) was referred to and followed. Paragraph 13 of the said judgment reads as follows:

**Para 13:** "Section 25-G provides for the procedure for retrenchment of a workman. The respondents have correctly submitted that the provisions of Sections 25-G and 25-H of the Act do not require that the workman should have been in continuous employment within the meaning of Section 25-B before he could be said to have been retrenched. The decision in *Central Bank of India* v. *S. Satyam* is clear authority on the issue. We see no reason to take a contrary view."

But even this case by the Supreme Court arose before the amendment made to Section 2(oo) of the I.D. Act and the relevant passage found in paragraph 11 is extracted below:

**Para 11:** "Learned counsel appearing on behalf of the respondents in both the appeals has submitted that the definition of retrenchment had undergone an amendment in 1984, whereas both the terminations in question had taken place prior thereto. In terms of the unamended definition, daily-wage employees whose services were terminated were also retrenched."

24. These two decisions of the Supreme Court were rendered before the amendment to Section 2(oo) and the same was not noticed by this Court. In order to understand Section 25H of the I.D. Act (after the amendment to Section 2(oo) of the I.D. Act in the year 1984 with effect from

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21.8.2004), one has to undertake a new exercise and only in that context, G.O.Ms.No.41 will have to be interpreted.

25. The learned Advocate General fairly conceded that the import of the amendment to Section 2(oo) of the I.D. Act and the introduction of Sub-section 2(oo)(bb) by amending Act 49 of 1984 dated 18.8.1984 has not been gone into by this Court in the earlier rulings. He also stated that the impugned order of the respondent Corporation has correctly stated that in order to qualify for re-employment under Section 25H of the I.D. Act, one has to bring their non-employment within the meaning of Section 2 (oo) of the I.D. Act as amended by Act 49 of 1984. He also agreed that G.O.Ms.No.41 more particularly, paragraphs 4(ii) and 4(iii) are loosely worded, which may give rise to all kinds of claims. However, in the batch of cases, disposed on 14.12.2006, the learned Judge had stated in paragraph 139(3)(a) that the employees, who were terminated from service subject to the condition that such employees have completed 240 days of service in a period of 12 calender months, preceding the date on which the vacancies are sought to be filled up by G.O.Ms.No.57 Transport (C1) Department dated 21.7.2005, should be considered first and thereafter, to consider the employees, who have not completed the required service as per Section 25H of the I.D. Act for re-employment. But, however, the same should not be applied to persons, who have not actually worked under the Corporation, but made a bogus claim.

26. With reference to paragraphs 139 (3)(a) and (b), it is stated that the case of direct recruits has already been settled by the concession made by the State before the Division Bench, which is also recorded in the order dated 12.3.2007 and this Court is not concerned about the same.

27. Subsequent to the ***Satyam case*** and ***State Bank of India case***, the Supreme Court has dealt with reliefs claimed by the workmen in terms of Section 25F and 25H read with Section 2(oo) of the I.D. Act. It is, therefore, relevant to quote some of the decisions in order to understand the correct legal position of the issue on hand.

28. The judgment of the Supreme Court reported in **JT 2006 (9) SC 520 [*Jaipur Development Authority vs. Ram Sahai and another*]** after referring to ***Satyam case*** and ***State Bank of India case*** (cited supra), in paragraph 28, it was observed as follows:

**Para 28:** "We would, therefore, proceed on the basis that there had been a violation of Sections 35G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages.... The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in

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terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served appellant.... We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re-instatement of his services, a sum of Rs.75,000/- is awarded to respondent by way of compensation as has been done by this Court in a number of its judgments."

Even in a case which arose before the 1984 amendment, the Supreme Court gave only a compensation and not relief of reinstatement.

29. In **2006 (8) SCC 508 [*State of Rajasthan vs. Sarjeet Singh and another*]**, the Suprmee Court, after holding that the worker is entitled for right under Section 25H, in paragraph 16, held as follows:

**Para 16:** "In terminating the services of Respondent 1, we would assume that violation of Section 25-G or 25-H occurred (although there is no factual basis therefor), but in any event, the same would not mean that the Labour Court should have automatically passed an award of reinstatement in service with back wages. We, however, although ordinarily would have set aside the impugned award and consequently the judgment of the High Court; in exercise of our jurisdiction under Article 142 of the Constitution of India, we direct the State to pay a sum of Rs. 30,000 to Respondent 1...."

[Emphasis added]

30. In the decision reported in **2007 (1) SCC 533 [*Gangadhar Pillai vs. Siemens Ltd.*]**, in paragraphs 23, 24 and 27, the Supreme Court held as follows:

**Para 23:** "The question as to whether an employee had intermittently ; been engaged as casual or temporary for a number of years is essentially a question of fact. The issue as to whether unfair labour practices had been resorted to by the employer or not must be judged from the entirety of the circumstances brought on record by the parties.

**Para 24:** Only because an employee has been engaged as a casual or temporary employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving him of the status and privilege of a permanent employee. Unlike other statutes, the employer does not have any statutory liability to give permanent status to an employee on completion of a period specified therein. What is, therefore, necessary to be considered for drawing an inference in terms of the said provisions would be to consider the entire facts and circumstances of the case."

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**Para 27** "It has furthermore not been denied or disputes that services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(oo) (bb) of the Industrial Disputes Act. Once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the employee concerned from the benefit of a permanent status. We, having regard to the fact situation obtaining herein, cannot infer that the findings of the Tribunal as also the learned single Judge of the High Court were manifestly erroneous warranting exercise of our extraordinary jurisdiction under Article 136 of the Constitution of India."

31. Mr.D.Hari Paranthaman, learned counsel stated that if a person is engaged merely on casual basis, it will not go outside the scope of Section 2(oo) of the I.D. Act as they were not engaged on contract basis. Therefore, exception found in Section 2(oo) (bb) of the I.D. Act will not apply to the cases, where workmen engaged on casual basis even though it was only for few days in a whole year.

32. Mr.S.Vaidyanathan, learned counsel brought to the notice of this Court the judgment of the Andhra Pradesh High Court made by a single Judge reported in **1990 (2) L.L.J. 577[*R.Sreenivasa Rao vs. Labour Court, Hyderabad and another*]** wherein an interpretation of Section 2(oo) (bb) of the I.D. Act was made in relation to a casual labour engaged on daily wages. He emphasised the finding rendered in paragraph 25, which is as follows:

**Para 25:** "That casual labour on daily wages fall within the definition of "workman" under Section 2(s) admits of no dbo8t and is settled by several rulings of this and other High Courts. Again casual labour on daily wages in continuous service with the required number of working days certainly come under Section Section 25F. The computation of the service is to be made in accordance with the provisions of Section 25-B. There is nothing in the statement of Objects and Reasons of the Amending Act of 1984 intending to exclude termination of such daily-wage casual labour from the purview of "retrenchment" in Section 2(oo). The main part of Section 2(oo) speaks of termination "for any reason' as amounting to retrenchment. In the absence of clear intention, the first part of Sub-clause(bb) cannot be

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interpreted to take in the termination of the services of the casual labour
on daily wages. In my view, per se termination of casual labour on daily wages is clearly outside the first part of Sub-clause (bb) of Section 2(oo) and was never intended to be excluded from the definition of"retrenchment". The "contract of employment" contemplated therein is, in my view, referable to contracts other than engagement as casual labour on daily wages. Any other view would reduce the content of the main part of Section 2(oo) to such a state of shrinkage which, in my opinion, the legislature would never have contemplated. Which in common parlance, "retrenchment" given as impression of termination for want of work, the Act has given a very wide definition of retrenchment by including terminations "for any reason whatseover", (except the limited categories falling under sub-clause (a), (b) which are not attributable to acts of the employer). But if the sub-clause (bb) is not restricted as stated by me in this case or by Jeevan Reddy,J. In D. Chennaiah's case (supra), there will be little scope for preserving and maintaining a substantial part of the width of the main part of Section 2(oo). "

33. However, the issue whether the workers were engaged on a contractual term which requires non-renewal or they were only casual workmen including those who were not eligible for any regularisation or permanency, is a question of fact, which will have to be determined not on the basis of affidavits filed before this Court under Article 226 of the Constitution of India but on the basis of evidence (both oral and documentary) to be let in before the appropriate Labour Court, which undoubtedly even has the power to compel the employer to produce all the documents. Therefore, at this stage, this Court is unable to accept the argument that the workmen are entitled for re-employment in the matter of this nature and their case falls within the definition of Section 2(oo) of the I.D. Act and not hit by the exceptions set out therein.

34. If one looks at paragraph 4 of G.O.Ms.No.41, in the light of the above binding precedents of the Supreme Court, it is clear that the respondent State cannot give preference on the ground that case of similarly placed persons, who have approached the Court, which is still under consideration as found in paragraph 4(ii) and also preference to those persons, whose services were terminated and was similarly placed like persons mentioned in paragraphs 4(i) and (ii) and who have not approached the Court but approached the Managing Directors seeking similar appointment. These two sub-paragraphs are not only contrary to the provisions of the I.D. Act but will be unconstitutional and violative of Articles 14 and 16 of the Constitution of India and will also become a source of corruption because there is no definite guideline given in terms of the law of the land. In fact, with a view to take advantage of these

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two sub-paragraphs only, spate of writ petitions have been pouring in into this Court.

35. If persons, as found in the order impugned, who had only worked for 11 days and 20 days occasionally and whose so-called non-employment did not come within the term retrenchment under Section 2(oo) of the I.D. Act read with exception found in sub-section (bb) of the I.D. Act, certainly, by an administrative order, the Government cannot create any preference for these persons and place them on higher pedestal than people who have registered their names in the Employment Exchanges and waiting for their cases to be considered through direct recruitment after a proper selection by a competent body. It is one thing to say that certain persons whose cases have been concluded by orders of this Court against which no further appeals have been made, are to be given employment. But it is another thing to say that the respondent Corporation by itself will determine the cases of similarly placed persons and whose cases are pending before this Court, without waiting for the final outcome of the same as well as even persons, who did not come to Court, but who are deemed to be similarly placed that too, by the whims and fancies of the Managing Directors for granting similar appointments.

36. These two sub-paragraphs found in paragraphs 4(ii) and 4(iii) are completely contrary to the preferential right carved out under Section 25H of the I.D. Act as interpreted by the Apex Court and, therefore, these two paragraphs, viz., 4(ii) and 4(iii) of G.O.Ms.No.41 Transport Department dated 13.7.2006, which are sought to be enforced by the petitioners in these writ petitions and several other writ petitions, had to be rejected for the following reasons:

(i) Right of re-employment under Section 25H of the I.D. Act will have to be determined only if an employee's retrenchment comes within the definition of the term 'retrenchment' found in Section 2(oo) of the I.D. Act and that it is not hit by the exception found in sub-section (bb) introduced by Central Act 49 of 1984 with effect from 18.8.1984.

(ii) Further, the claims of workmen will have to be determined in terms of paragraph 139(3)(b) of the order passed by the learned Judge in the batch of cases, disposed on 14.12.2006, wherein the learned Judge clearly states that only persons who are qualified under Section 25F of the I.D. Act, are eligible for re-employment but it will not apply to persons, who have not actually worked under the Corporation but made a bogus claim.

(iii) The workmen, who have approached this Court including the petitioners, though made a false claim about the length of their service, and by the impugned order, the respondent Corporation had taken a definite stand that they had worked

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less than 20 days and 11 days that too, they had worked in vacancies due to unforeseen circumstances like strike, festivals and large scale absentism, are not eligible for any preferential treatment.

37. In view of the dispute over their claim, the said employees will have to approach the appropriate Labour Court to establish the total number of days worked by them and that their subsequent non-employment and their claim preference for re-employment was guaranteed under Section 25H of the I.D. Act. It is for them to prove to the satisfaction of the Labour Court that they were actually retrenched in terms of the main definition under Section 2(oo) of the I.D. Act and not covered by the exception found under sub-section (bb) of Section 2(oo) of the I.D. Act.

38. As can be seen from the various decisions of the Supreme Court referred to above, viz., ***Jaipur Development Authority***, ***State of Rajasthan and Gangadhar Pillai's cases***, even in pre-1984 cases, the Labour Court has discretion to award compensation and not reinstatement since the entry into employment was not proper and it was made as a stop gap arrangement. Though the object of the first respondent in issuing G.O.Ms.No.41 Transport Department dated 13.7.2006 to accommodate persons covered by paragraph 4(i) may be inevitable, but with reference to paragraphs 4(ii) and 4(iii) of the G.O., the said exercise cannot be undertaken by the second respondent Corporation either until further orders are passed by this Court in cases which are pending consideration, or in other cases, the workmen get declaration from the appropriate Labour Court after establishing that they were actually retrenched in terms of Section 2(oo) of the I.D. Act and their cases do not fall under sub-section (bb) of Section 2(oo) of the I.D. Act.

39. Finally, the challenge to the impugned order by the petitioners in the present petitions will have to fail as they have already approached this Court with a binding order and they cannot reopen the said issue on the strength of G.O.Ms.No.41. The order passed by the Transport Corporation does not suffer from any illegality or irregularity and the interpretation found in the impugned orders of the respondent Corporation is fully in consonance with the provisions of the I.D. Act. Therefore, the writ petitions fail and the same shall stand dismissed. No costs. Connected Miscellaneous Petitions are closed.

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To

1. The Secretary
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   Transport Department
   Fort St. George
   Chennai - 9

2. The Managing Director
   Management of Tamil Nadu
   State Transport Corporation
   Division - III, Madurai
   Madurai

3. The Managing Director
   Management of Tamil Nadu
   State Transport Corporation
   Division - II, Wannarpet
   Tirunelveli District

4. The General Manager
   The State Transport Corporation (Madurai) Ltd.
   Nagercoil
   Kanyakumari District

+ 1 CC to the Government Pleader SR NO 28512

+ 3 CCs to Mr.I.David Singh, Advocate SR NO 27547, 27546, 27545



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